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A Guide to the Singapore Constitution (2nd ed.)

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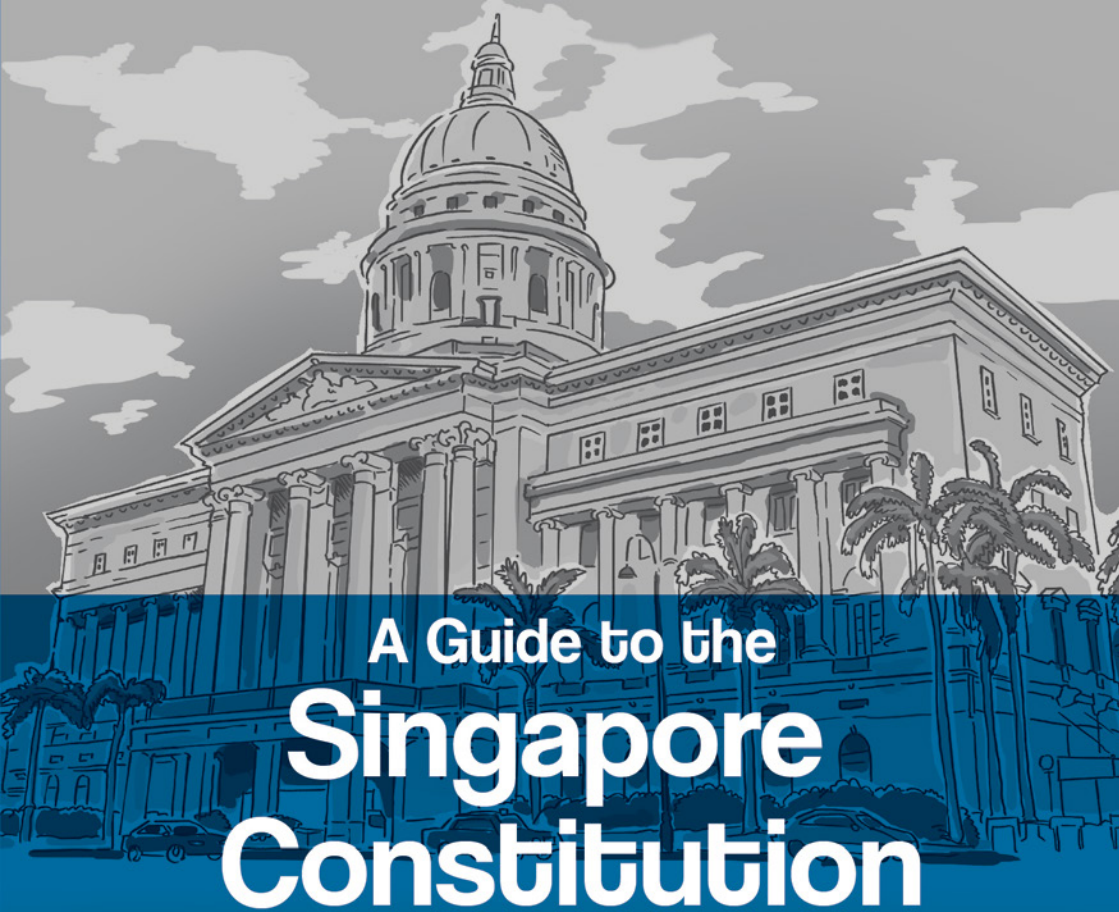
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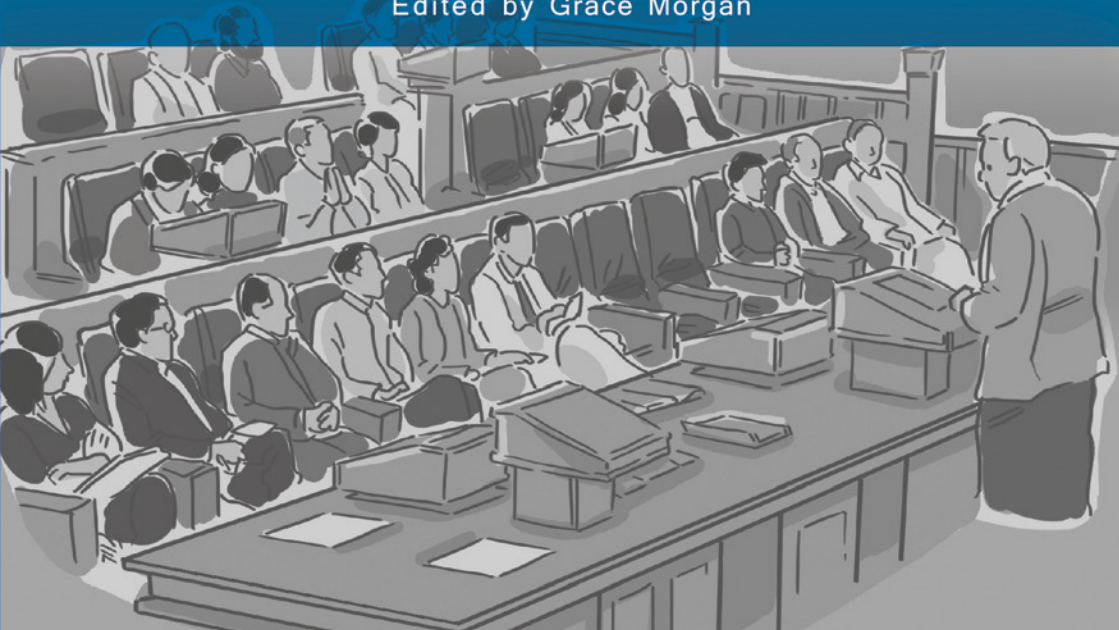
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A Guide to the Singapore Constitution

Edited by Grace Morgan



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A GUIDE TO THE SINGAPORE CONSTITUTION

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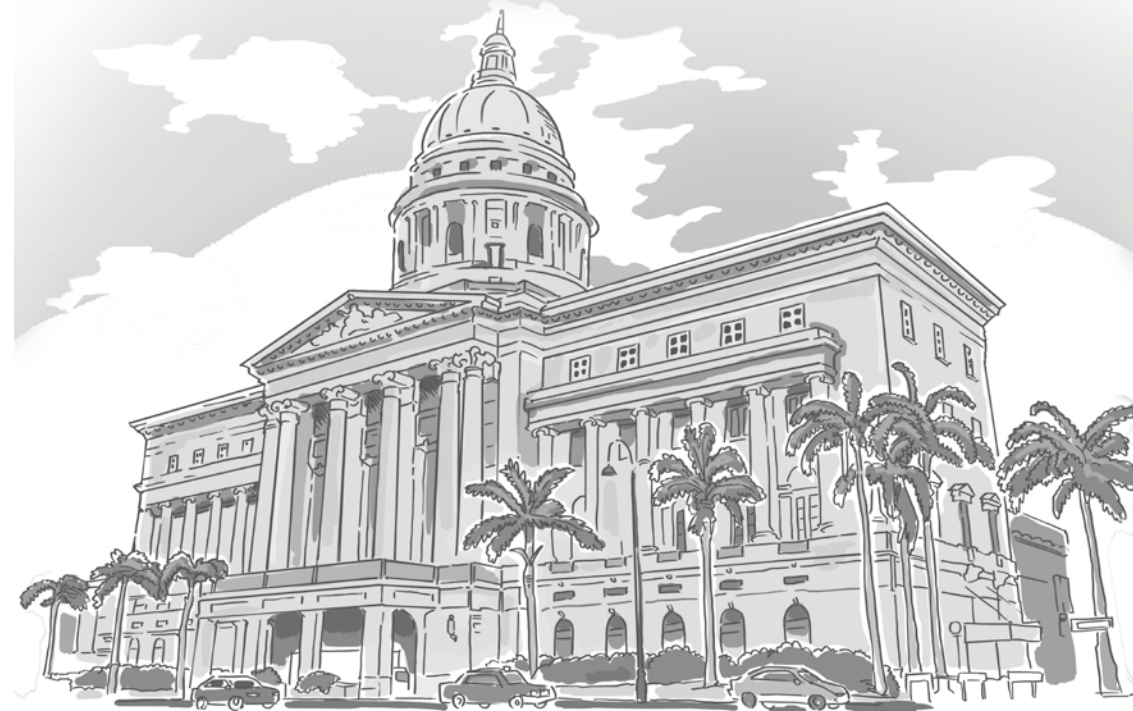
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About SMU Apolitical: Formed in 2010, SMU Apolitical provides platforms for the SMU community to gain a better understanding of the policy-making process and the issues that affect our society today through dialogues and forums on a diverse range of topics.

About the Singapore Management University: A premier university in Asia established in 2000, SMU is internationally recognised for its world-class research and distinguished teaching. SMU is known for its highly interactive, collaborative and project-based approach to learning.

About the editor: Grace Morgan graduated from the SMU School of Law in 2014. She now works at a law firm in Singapore.

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Foreword

It gives me great pleasure to pen the foreword to *A Guide to the Singapore Constitution*.

This primer is an introductory guide to the Constitution, its history, the legal concepts associated with it (such as the separation of powers and constitutional supremacy) and so much more. With illustrations and diagrams to aid in understanding, it is designed for readers of all ages and from all walks of life.

The Constitution is the supreme law of the land. It provides for, among other things, the 3 branches of the Singapore government (namely, the executive, the legislature and the judiciary) and secures our fundamental liberties. The provisions in the Constitution are applied in our daily lives, both directly and indirectly, and more often than not without us even noticing. With possible changes to the Constitution in the near future, there is no better time to gain some basic knowledge of this important document.

The first edition of this primer was published in December 2013. This second edition comes with an overhauled design and repackaged, updated content for easier understanding. I would like to commend the team of undergraduates, alumni and faculty from the Singapore Management University for their effort in putting this together.

Let us continue working towards knowing and understanding our Constitution better!

Madam Halimah Yacob

Speaker of Parliament, Republic of Singapore
Member of Parliament, Marsiling-Yew Tee Group
Representation Constituency

September 2016

Introduction to the Singapore Constitution

A constitution has been defined as the collection of rules that determine the creation and operation of the government and its institutions. In practice, the contents of national constitutions differ significantly given the different contexts and government structures.

Constitutions may also be written or unwritten. The United Kingdom, for instance, has an unwritten constitution as its constitutional rules and conventions are not codified in a single constitutional document.

In Singapore, we have a written Constitution, which is called the Constitution of the Republic of Singapore in full. Article 4 of the Constitution declares that it is the supreme law of the land:

Supremacy of Constitution

Article 4. This Constitution is the supreme law of the Republic of Singapore and any law enacted by the Legislature after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

Article 4 embodies the principle of constitutional supremacy. This means that all other laws passed by Parliament must be in line with the Constitution and cannot violate the provisions of the Constitution.

The Constitution sets out the basic framework for the 3 branches of government in Singapore, which are the Executive, the Legislature and the Judiciary. It also guarantees our fundamental liberties, and provides for other important aspects of governance such as citizenship and the use of public funds.

As for the procedure for amending the Constitution, when an amendment is proposed, Parliament has to vote to approve the change. In contrast to other laws which can be

amended with a simple majority (i.e. more than 50%) of the Members of Parliament (MPs) who are present in Parliament, an amendment to the Constitution requires the approval of at least a 2/3 majority of all elected MPs. In addition, to amend the provisions in the Constitution relating to the sovereignty of Singapore a national referendum must be held. These provisions are deemed to be of utmost importance, and at least 2/3 of voters must vote in favour of such an amendment before it can be approved.



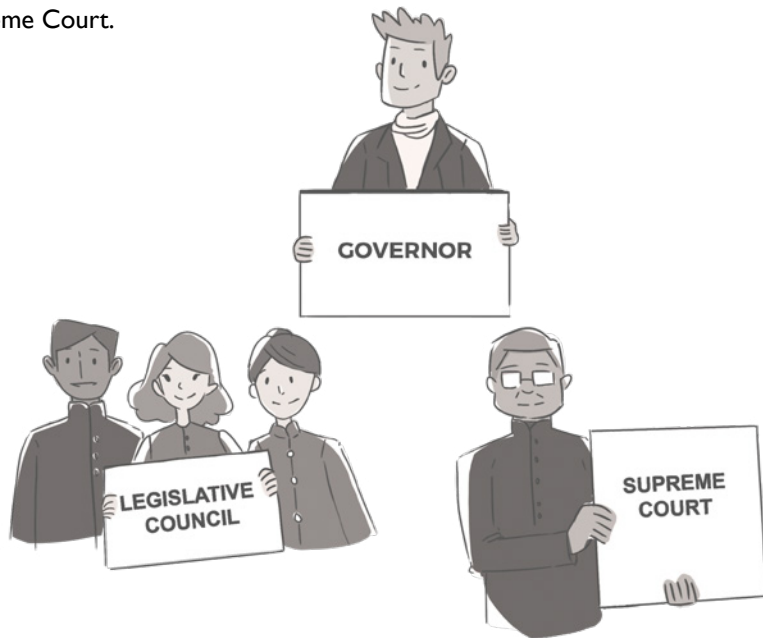


History of the Singapore Constitution

Singapore as a Crown colony

In 1819, Singapore was founded by Sir Stamford Raffles. In 1826, Singapore was grouped together with Penang and Malacca into a single administrative unit known as the Straits Settlements. The Straits Settlements came under the administration of the East India Company.

In 1867, the Straits Settlements became a Crown colony. This meant that it had greater autonomy over its affairs, and was granted a colonial constitution. This allowed the Straits Settlements to have its own Governor, Legislative Council and Supreme Court.



After World War II, the Straits Settlements was disbanded and Singapore became a separate Crown colony. During this period, people were busy rebuilding their lives after the war, and the Progressive Party came into power by winning most of the elected seats in the Singapore Legislative Council in 1948. A Constitutional Commission was subsequently set up to examine how political participation among vari-

ous groups could be increased. The Commission made several recommendations, which the Government mostly accepted and implemented in 1955. These included transforming the Legislative Council from a predominantly-appointed body to one where the majority of representatives were elected (25 out of 32 seats), and introducing automatic voter registration to encourage voting.

Singapore as a self-governing state, and a state in the Federation of Malaysia

In 1958, the British Parliament passed the State of Singapore Act which converted Singapore from a colony to a self-governing state. This was achieved after 3 constitutional meetings on self-government between the British and selected members of the Singapore Legislative Assembly led by Chief Minister Mr David Marshall in 1956 and by his successor Mr Lim Yew Hock in 1957 and 1958.

In addition, pursuant to the Singapore (Constitution) Order-in-Council 1958, the post of Governor was abolished, and the office of the Head of State, or *Yang di-Pertuan Negara*, was established in its place. Sir William Goode, who was the last Governor of Singapore, was made the first interim Head of State. He relinquished the post to Yusof bin Ishak 6 months later.



The title 'Yang di-Pertuan Negara' was used until Singapore's independence, when it was replaced by the office of the President.

In 1963, Singapore joined the Federation of Malaysia. As a state of Malaysia, Singapore was bound by the Federal Constitution.



Singapore as an independent nation

In 1965, Singapore left the Federation and gained full independence as the Republic of Singapore. The Malaysian Parliament transferred all legislative and executive powers formerly wielded by the Federal government to the new Singapore government. A working Constitution comprising 3 documents was quickly put together:

- the Constitution of the State of Singapore 1963;
- the Republic of Singapore Independence Act 1965 (RSIA); and
- specific provisions of the Malaysian Federal Constitution, which continued to apply in Singapore even after independence by virtue of the RSIA.

Following independence, there was a need to assure minority groups of the official commitment to the equal treatment of all Singaporeans regardless of race, language or

religion. The Wee Chong Jin Constitutional Commission was set up in 1966 to study the issue of how minority rights could be protected in the Constitution.

The Wee Commission made various recommendations, including entrenching fundamental liberties and introducing what would later be known as the Presidential Council for Minority Rights to ensure that laws do not contain provisions that discriminate on the basis of race or religion. In 1969, Parliament adopted some of its recommendations and amended the Constitution accordingly. Over the years, the Constitution has been amended several times to introduce new features to the system of government. These include Group Representation Constituencies, Non-constituency Members of Parliament, Nominated Members of Parliament and the Elected President.





Functions of the Singapore Constitution

The Singapore Constitution serves several functions. These include:

Being the source of the government's power

- The Constitution sets out the functions and powers of various organs of state, which include the Elected President, the Executive, the Council of Presidential Advisers, the Legislature and the Judiciary.

Limiting the government's power

- The Constitution also limits the government's power. This is done through safeguards and specific procedures that must be followed before certain powers can be exercised. Also, all executive actions and laws passed by Parliament cannot contravene the provisions of the Constitution.
- The division of power in the Constitution is based on the concept of the separation of powers, which prevents power from being concentrated in the hands of a select few. This will be examined further in the next chapter.

The Separation of Powers

What is the separation of powers?

The separation of powers is the concept that the different powers of the government must be separated and divided between different branches. Power should not be concentrated in the hands of a select few, so that the liberty of the people may be preserved. Each branch should have a will of its own, and the members of each branch should be as independent from the other branches as possible. On the other hand, the way in which each branch exercises its power is also scrutinised by the other 2 branches.

In Singapore, there are 3 branches of government — the Executive, Legislature and Judiciary. The Executive is made up of the President and the Cabinet, the Legislature is made up of the President and Parliament, and the Judiciary is made up of the Judges and the courts.

These are the provisions in the Constitution relating to executive, legislative & judicial power:

Executive authority of Singapore



23. —(1) The executive authority of Singapore shall be vested in the President and exercisable subject to the provisions of this Constitution by him or by the Cabinet or any Minister authorised by the Cabinet.

(2) The Legislature may by law confer executive functions on other persons.

Legislature of Singapore



38. The legislative power of Singapore shall be vested in the Legislature which shall consist of the President and Parliament.

Judicial power of Singapore



93. The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

Each branch, directly or indirectly, acts as a check and balance over the other 2. For example, during parliamentary debates, MPs, as members of the Legislature, are entitled to pose questions to Cabinet ministers, as members of the Executive, on the Government's policies.

The Judiciary has a special responsibility of ensuring that the Executive and Legislature comply with the law, including the Constitution. The Judiciary has a great degree of independence to do so because it is the only branch of government that is not elected by the people (please refer to Chapter 8 on the Judiciary).

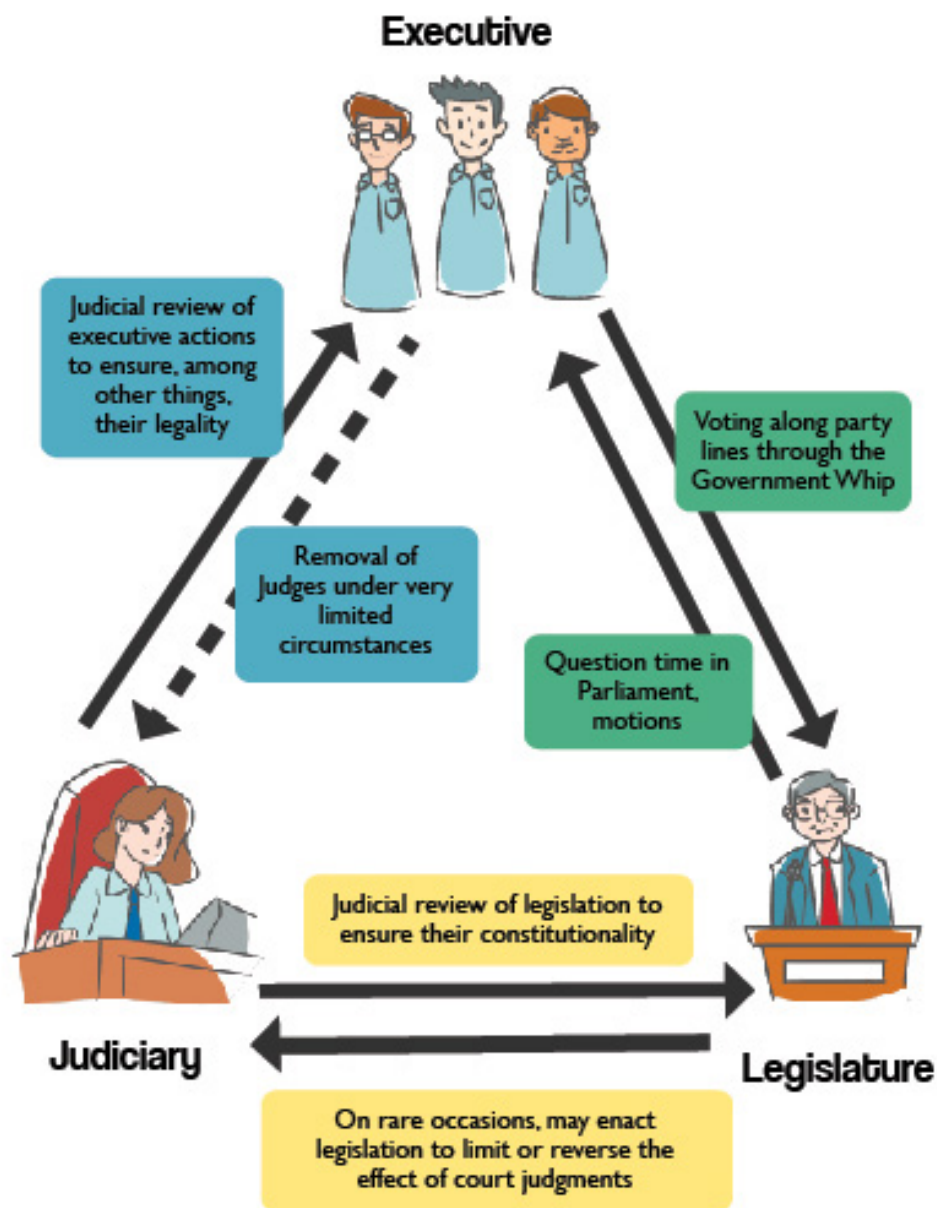
How do the branches of government check each other?

The Judiciary checks the Legislature and Executive through the mechanism of judicial review. The Judiciary has some oversight over administrative decisions made by the Executive, and also ensures that the laws passed by the Legislature do not violate provisions of the Constitution. To perform these functions well, the Judiciary must be independent from the Executive and the Legislature. Hence, the extent of their control over the Judiciary is very limited.

The Legislature checks the Executive by asking Cabinet ministers questions and moving motions in Parliament on the Government's policies. As for the Judiciary, the Legislature may on rare occasions enact new statutes or amend existing ones to limit or reverse the legal effect of court judgments that it feels are not in the public interest.

The Executive is able to exercise control over the Legislature through the Government Whip, which ensures that members of the ruling party follow the party line when voting in Parliament. The extent of this control depends on how many MPs the ruling party has in Parliament. The People's Action Party (PAP) presently holds the majority of elected seats in Parliament, and hence, the Executive exercises relatively strong control over the Legislature. As for the Judiciary, the President may, acting on the Cabinet's advice, remove a Judge from office under very limited circumstances.

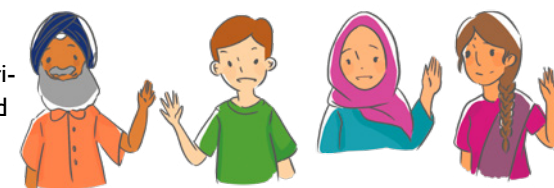
Within the Executive itself, the President acts as a check on the Cabinet as he has powers to prevent the nation's past financial reserves from being misused, and to protect the integrity of the public service, among other things.



Other functions of the Constitution

Protecting minority interests

- In the Constitution, minority interests are protected through direct and indirect means.



- The Constitution protects minority interests through direct means such as the Presidential Council for Minority Rights and the existence of fundamental liberties that prohibit discrimination. The Presidential Council for Minority Rights scrutinises bills passed by Parliament to ensure that they do not discriminate against any racial or religious community. Fundamental liberties in the Constitution, as discussed in the next section also protect minority rights.

ious fundamental liberties. They safeguard our basic rights, and limit legislative and executive power to a certain extent. In this section, we examine 4 of the fundamental liberties stated in the Constitution.

Liberty of the Person (Article 9)

Liberty of the person

9. — (1) No person shall be deprived of his life or personal liberty save in accordance with law.

- The Constitution also safeguards minority interests through indirect means such as Group Representation Constituencies, which ensure that there is minority representation in Parliament.

- Article 9(1) of the Constitution guarantees that the taking of a person's life or liberty must be lawful and in accordance with the law.

Safeguarding the fundamental liberties of individuals

- Part IV of the Constitution guarantees that individuals enjoy var-

- The state may, for instance, enact laws providing for the death penalty for those guilty of serious crimes. The state may also interfere with people's liberty by

arresting and imprisoning them if they are convicted of criminal offences; or by detaining them without trial under, for example, the Criminal Law (Temporary Provisions) Act if they are associated with serious criminal activities. However, in all instances, such life or liberty can only be taken away to the extent that the law allows.

- Also, all procedures imposed by law and the fundamental rules of natural justice, such as giving the person an opportunity to explain his or her side of the story, must be followed before a person's life or liberty is taken away.



Right to Equality (Article 12)

Equal protection

12.—(1) All persons are equal before the law and entitled to the equal protection of the law.

- Article 12(1) guarantees our right to be treated equally before the law, and to have equal protection of the law.

• This means that we are entitled to be treated equally and not be privileged or discriminated against by irrelevant factors. This does not mean that individuals must always receive the same treatment under all circumstances.

- Article 12 has been debated extensively in recent years with regard to Section 377A of the Penal Code, which criminalises sex between men.



Freedom of speech, assembly and association (Article 14)

Freedom of speech, assembly and association

14.—(1) Subject to clauses (2) and (3) —

- (a) every citizen of Singapore has the right to freedom of speech and expression;
- (b) all citizens of Singapore have the right to assemble peaceably and without arms; and
- (c) all citizens of Singapore have the right to form associations.

- Article 14(1) grants *Singapore citizens* the constitutional rights to freedom of speech, assembly and association. These constitutional rights are not available to permanent residents and foreigners.

- Under Articles 14(2) and (3), Parliament can restrict the rights to freedom of speech, assembly and association under various circumstances, for instance, if a restriction is considered necessary for security reasons or to maintain public order in Singapore.

- This is in line with the idea that while the freedom of expression is important, the exercise of this freedom should not be done at the expense of the society or public interest. For example, the freedom of speech is restricted by defamation law — if one makes an untrue statement about someone else that damages that person's reputation, that person could sue the maker of the statement for monetary compensation.

- Restrictions on the freedom of assembly are found in, for instance, the Public Order Act. It is necessary for one to obtain a permit from the Commissioner of Police before holding an assembly or demonstration in any public place.

- One exception to this general rule is Speakers' Corner, which is located within Hong Lim Park. Speaking events can be held there without the need to apply for any permit. Event organisers must, however, register their intention to speak there beforehand. They should also abstain from topics relating to religion or topics that may cause ill-will amongst racial groups.

Freedom of religion (Article 15)

Freedom of religion

15.—(1) Every person has the right to profess and practise his religion and to propagate it.

- Article 15(1) protects both the internal and external dimensions of the free-

dom of religion. The right to profess — to declare that one belongs to a particular religion — relates to the internal dimension, while the rights to practise and propagate one's religion pertain to the external dimension.

- Similar to Article 14, Parliament may restrict the freedom of religion on the grounds of public order, public health or morality. For instance, it is a criminal offence to say or do something that causes feelings of ill-will or hostility between different groups in society.
- Singapore has no state religion and is therefore a secular state.



The Executive

The Elected President

The President is the Head of State of Singapore and is elected for a 6 year term.

The Elected Presidency scheme was introduced in 1991. It effectively expanded the role of the President from being merely ceremonial in nature, to one that gives the President some custodial and discretionary powers. The President's powers may be divided into 3 categories:

- 1** Those which he or she must exercise in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet (category 1);
- 2** Those which are discretionary, but which he or she must consult the Council of Presidential Advisers (CPA) on before exercising (category 2); and
- 3** Those which are discretionary and do not require the President to consult the CPA before exercising (category 3). However, the President may, if he or she wishes to, consult the CPA before exercising these powers.



The Cabinet has general control over the Government and its policies, and hence, most of the President's powers must be exercised in accordance with the advice of the Cabinet (category 1 above).

Although the term "advice of the Cabinet" makes it sound as if the President can choose not to take the advice given, it is well established in law that the President must follow the Cabinet's advice.

Nonetheless, the President also has powers that he or she can exercise independently of the Cabinet under specified circumstances (categories 2 and 3 above).

First, the President acts as a **custodian** or "second key" over Singapore's financial reserves that have been built up over the years. The Government exercises the "first key" by deciding if it wishes to draw

down on past reserves, that is, financial reserves that have been built up in previous parliamentary terms. The President has the power to block such a proposed drawdown by the Government if, after consulting the CPA, he or she deems this to be against Singapore's interests. This is an example of a category 2 power.

This safeguard mechanism was triggered for the first time in 2009, when the Government sought to use the past reserves to fund special policies in the wake of the global financial crisis. Then-President S. R. Nathan gave his approval for the drawdown of \$4.9 billion of past reserves. This was mostly used to fund the Jobs Credit Scheme, which was aimed at saving jobs.

The President also plays a **gate-keeper role** in decisions made under the Internal Security Act and Maintenance of Religious Harmony

Act (MRHA). These are category 3 powers.

Under the MRHA, for example, the Government may issue a restraining order against someone who has been making statements that cause hostility between religious groups. Such a restraining order must be reviewed by the Presidential Council for Religious Harmony. If the Council does not agree with the Government that the restraining order is necessary, the President will step in to cancel, change or confirm the order.

Finally, the President has a role to play in **ensuring the Government remains corruption-free**. Under the Constitution, the director of the Corrupt Practices Investigation Bureau may conduct certain investigations with the President's assent. This is even if

the Prime Minister or the Cabinet tries to halt the investigation. This is also a category 3 power.

The Constitution allows Parliament to overrule some of the President's decisions, including a refusal to approve the use of past reserves. The support of at least 2/3 of all the elected MPs in Parliament is needed to overrule the President.

Council of Presidential Advisers

The Constitution requires the President to consult the Council of Presidential Advisers (CPA) when exercising some of his powers. The CPA is presently made up of 6 members and 2 alternate members. Among the 6, the President appoints 2 members; 2 are the Prime Minister's nominees, the Chief Justice nominates 1 member and the Chairman of the Public Service Commission



President appoints 6 members for the CPA

(PSC) nominates 1 member. This system ensures the CPA as a whole will be as neutral as possible. The CPA's members are appointed for 6 year terms.

Cabinet

Apart from the President, executive power is exercised by the Cabinet. The Cabinet, and not the President, governs the nation on a day to day basis.

The Cabinet is made up of the Prime Minister and all the other Ministers. The Prime Minister is a Member of Parliament who is appointed to the role by the President. In appointing the Prime Minister, the President selects the person who is likely to command the confidence of the majority of the Members of Parliament.

The other members of the Cabinet are also Members of Parliament.



They are appointed to their ministerial positions by the President acting on the Prime Minister's advice. Members of the Cabinet are not allowed to hold any office of profit or actively engage in commercial enterprise, and must effectively work full-time as Ministers. Ministers of State and Parliamentary Secretaries are, strictly speaking, not part of the Cabinet, though they are part of the Executive. They assist Ministers with their duties.

Collective responsibility of the Cabinet

Every member of the Cabinet is collectively responsible to Parliament. This means that the Cabinet must speak with one voice, and that internal Cabinet discussions or disagreements are to be kept confidential. This is so that a united front can be presented to Parliament and to the public. In the event that a vote of no

confidence is passed in Parliament, the principle of collective responsibility entails that the whole Cabinet should resign and a new one is formed. The concept of collective responsibility also means that all Cabinet members have a duty to answer questions posed by MPs in Parliament about the Government's actions and policies.

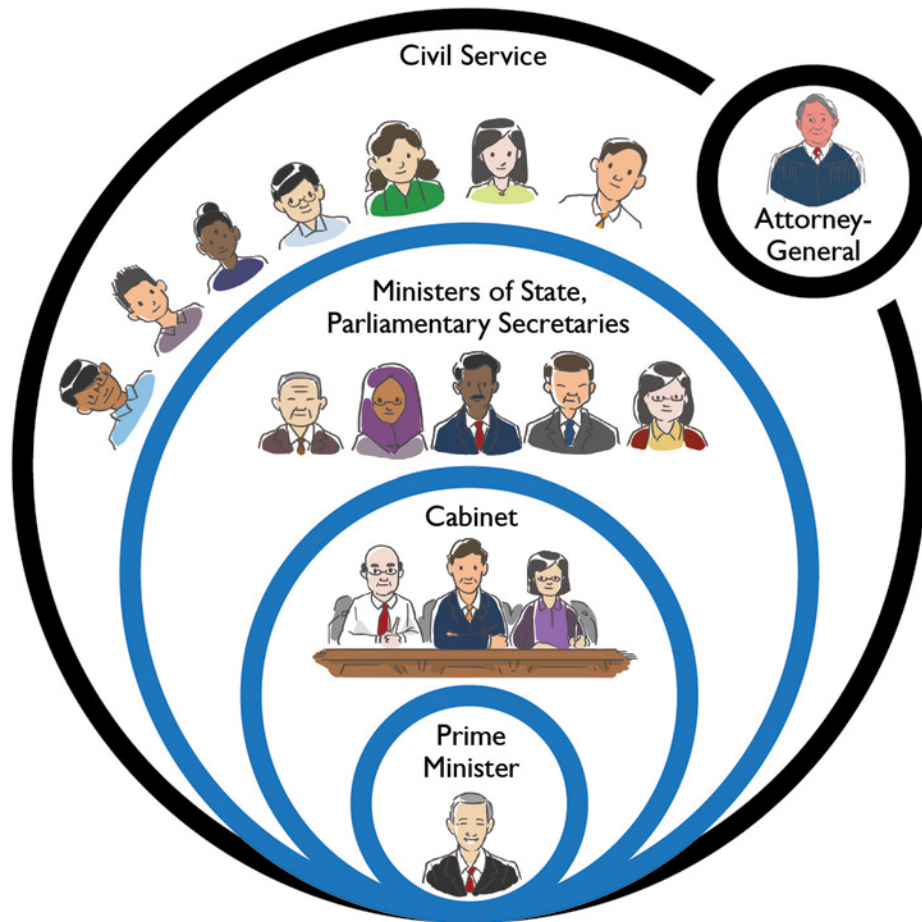
Attorney-General

The Attorney-General performs 2 main functions. First, the Attorney-General is the Government's principal legal adviser. This means that he or she provides the Government with legal advice, drafts and vets its contracts, and represents the Government in its civil (non-criminal) lawsuits.

Second, the Attorney-General is the Public Prosecutor in relation to criminal offences. The Attorney-General decides whom to charge and what offences to charge them with. In making these decisions, the Attorney-General takes into account many factors, such as the evidence available, and the offender's age and past offences. This power to decide is called *prosecutorial discretion*, and it is a very wide power. No one, not even the Cabinet or the Judiciary, can interfere with the Attorney-General's exercise of prosecutorial discretion. This is unless there are clear breaches of constitutional rights. The Attorney-General's wide prosecutorial discretion is important to ensure that no one is above the law, including top government officials.



The Executive



The blue circles refer to appointments for political office holders

A side note on statutory boards

Statutory boards are semi-autonomous organisations which are created by laws (statutes) passed by Parliament. Statutory boards carry out their daily operations independently of the Executive. While employees of statutory boards may be considered public servants, they are not part of the Singapore Civil Service as they are hired directly by the statutory boards.

Nonetheless, each statutory board receives some funding from and reports to a particular Ministry on a regular basis. This accounts for their semi-autonomous nature. Examples include the Health Promotion Board, the National Environment Agency and the National Heritage Board.



The Legislature

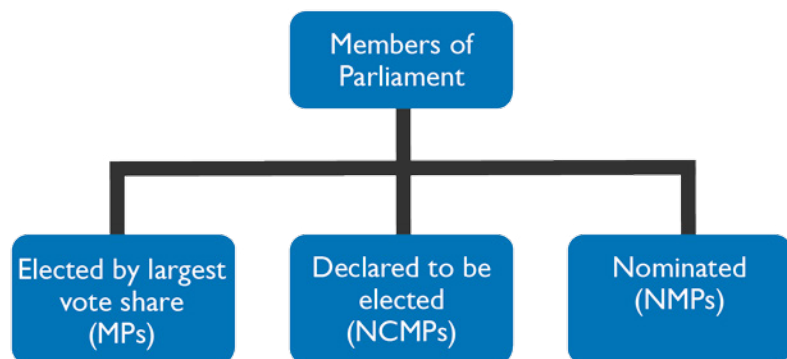
The Legislature is made up of the President and Parliament. Parliament is the primary law-making body in Singapore; the President plays a minor, though important, role in the process. The Singapore Parliament follows the British Westminster model. However, unlike the British Parliament, the Singapore Parliament is unicameral as there is only one chamber and no upper house.

In this section, we examine:

- 1 The composition of Parliament; and
- 2 The law-making process.

The composition of Parliament

Following the Westminster model, Members of Parliament are the representatives of the people. They speak on behalf of the people in debating and passing laws. However, in a departure from the British system, Singapore has introduced 2 innovations to allow people who were not democratically elected to be members of Parliament.



Elected MPs

Elected MPs earn their seats in Parliament by obtaining the largest vote share at elections (whether general elections or by-elections).

NCMPs

Non-Constituency Members of Parliament are the *best losers* from the Opposition in a general election. This means among all the Opposition members who lose in the elections, those with the highest percentages of votes will get to be NCMPs, subject to some other rules. This scheme was introduced in 1984 to ensure the representation in Parliament of a minimum number of MPs not from the ruling party. The number of NCMPs that can be declared as elected is 9 less the number of Opposition MPs who are actually elected to Parliament. For example, if 6 Opposition MPs won the polls in their constituencies, 3 more Opposition candidates who were unsuccessful in the general election can be declared to have been elected as NCMPs.




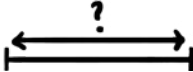
NMPs

NMPs are not members of any political party, and they do not participate in elections. Rather, they are appointed by the President based on nominations made by a Special Select Committee of Parliament chaired by the Speaker of Parliament. The rationale for the NMP scheme is to introduce independent and non-partisan voices into Parliament. NMPs are individuals who have distinguished themselves in various fields such as arts, culture, the sciences, business, industry, the professions, social or community service or the labour movement. The Constitution states there can be a maximum of 9 NMPs at any given time, with each term lasting 2.5 years.

In 1994, then-NMP Professor Walter Woon moved a private member's bill, which is a bill proposed by a backbench MP and not by the Government. After several rounds of debates and amendments, the bill was eventually passed as the Maintenance of Parents Act. This was the first, and so far is the only, bill introduced by an NMP that has become law.



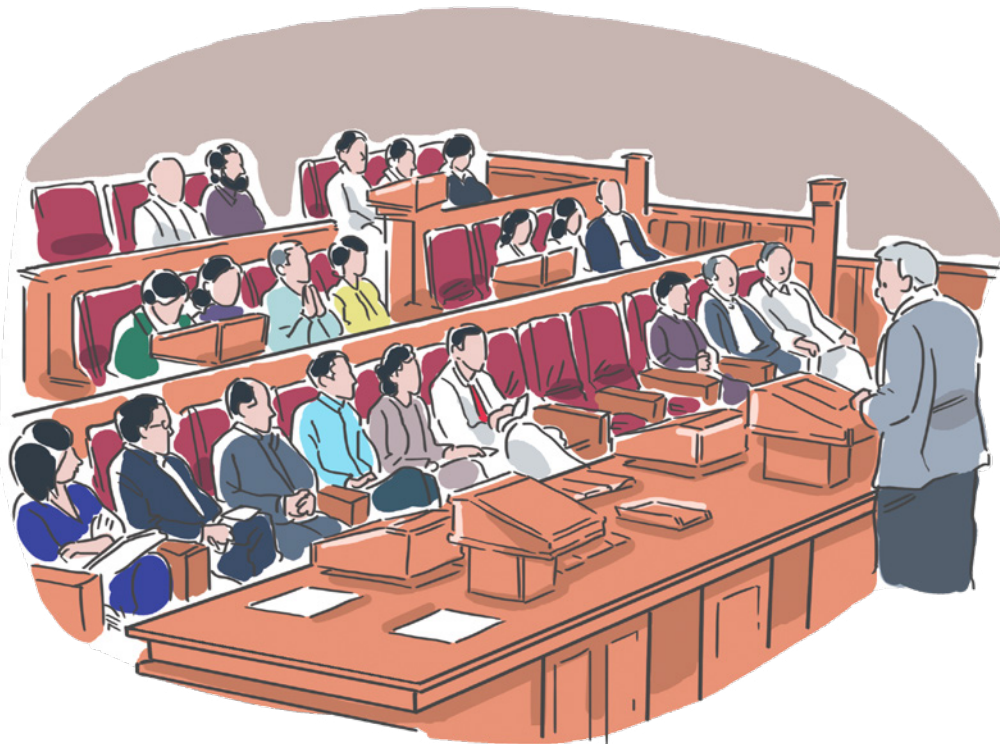
Table of comparison between elected MPs, NCMPs and NMPs

	Elected MPs	NCMPs*	NMPs
Participated in an election?	Yes.	Yes, but lost in the election.	No; and they cannot be members of any political party.
 Elected or appointed? 	Elected by largest vote share.	Declared to be elected based on the candidate's share of votes. NCMPs have priority to be declared elected based on how well they did at the polls — the losing candidate with the highest share of votes in his or her constituency has the highest priority to be declared elected, and so on.	Appointed by the President based on nominations made by a Special Select Committee of Parliament chaired by the Speaker of Parliament.
Legislative powers 	Full powers.	Can participate in all debates in Parliament, but cannot vote on any motion relating to: <ul style="list-style-type: none"> ▪ Bills to amend the Constitution; ▪ Supply Bills, Supplementary Supply Bills or Final Supply Bills, which authorise the spending of public funds by the Government; ▪ Money Bills, which deal with various finance-related matters; ▪ Votes of no confidence in the Government; and ▪ Removal of the President from office. 	Same as NCMPs.
Length of term 	One term of Parliament (the maximum term is 5 years from the first sitting of Parliament after a general election, but the Prime Minister can call for another general election before the 5 year term is up).	Same as elected MPs.	2.5 years.

*Changes to the legislative powers of NCMPs are expected to be made in the near future.

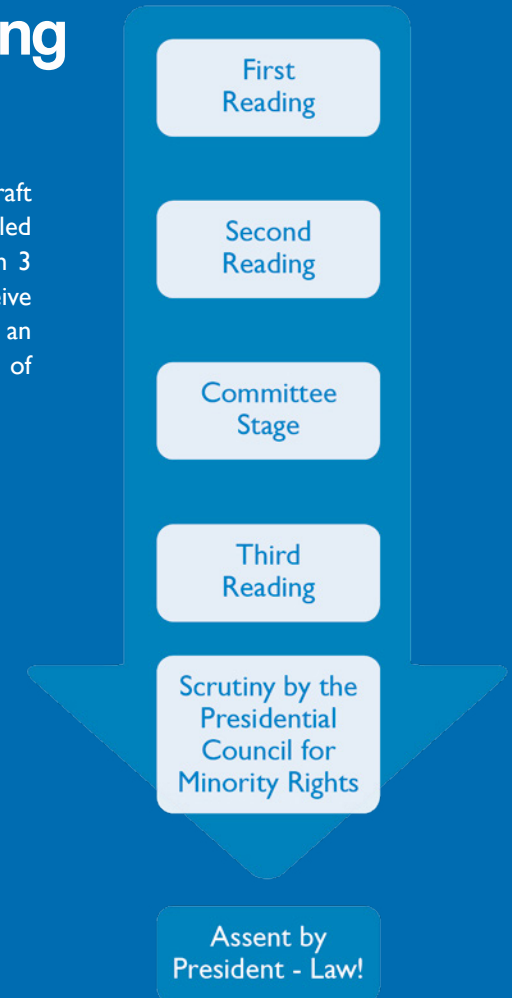
Government Parliamentary Committees

The Government Parliamentary Committee (GPC) scheme is not provided by law. The scheme was established and implemented by the ruling People's Action Party (PAP). GPCs are made up of PAP MPs, and each GPC examines the policies and proposed legislation of one or two particular ministries. One of the intended aims of GPCs is to allow ordinary MPs to participate more in the policy-making process.



The law-making process

Before a statute is passed, the draft that is debated in Parliament is called a **bill**. All bills must go through 3 readings in Parliament and receive the President's assent to become an Act of Parliament and thus part of the law in Singapore.



First Reading

The bill is formally introduced in Parliament. There is no debate during this stage.



Second Reading

Members debate the general principles of the bill. They then vote on whether the bill should proceed to the next stage. For most bills, support from a simple majority — more than 50% — of all MPs present and voting is required to proceed.



Committee stage

The details of the proposed law are examined, and changes to certain clauses can be proposed. Straightforward bills are examined by a committee formed by all the MPs present in Parliament (called a Committee of the Whole House), while bills which are more complicated or affect the public more widely may be examined by a committee made up of a smaller group of MPs (a Select Committee).



Third reading

The principles behind the bill can no longer be questioned, and only minor amendments to the wording are allowed. The bill is then voted upon. For most bills, a simple majority of all the MPs present and voting is required for the bill to be approved.

Scrutiny by the Presidential Council for Minority Rights

The Council reports to the Speaker of Parliament whether there is any clause in a bill that contains a *differentiating measure*, that is, one which discriminates against any racial or religious community. If the PCMR issues an adverse report, Parliament can present the bill for assent by the President only if: (i) the bill is amended and the PCMR approves the amended version; or (ii) Parliament overrides the adverse report by a super-majority of 2/3 of the total membership of Parliament.

President's assent

Bill becomes an Act of Parliament, and forms part of Singapore law!

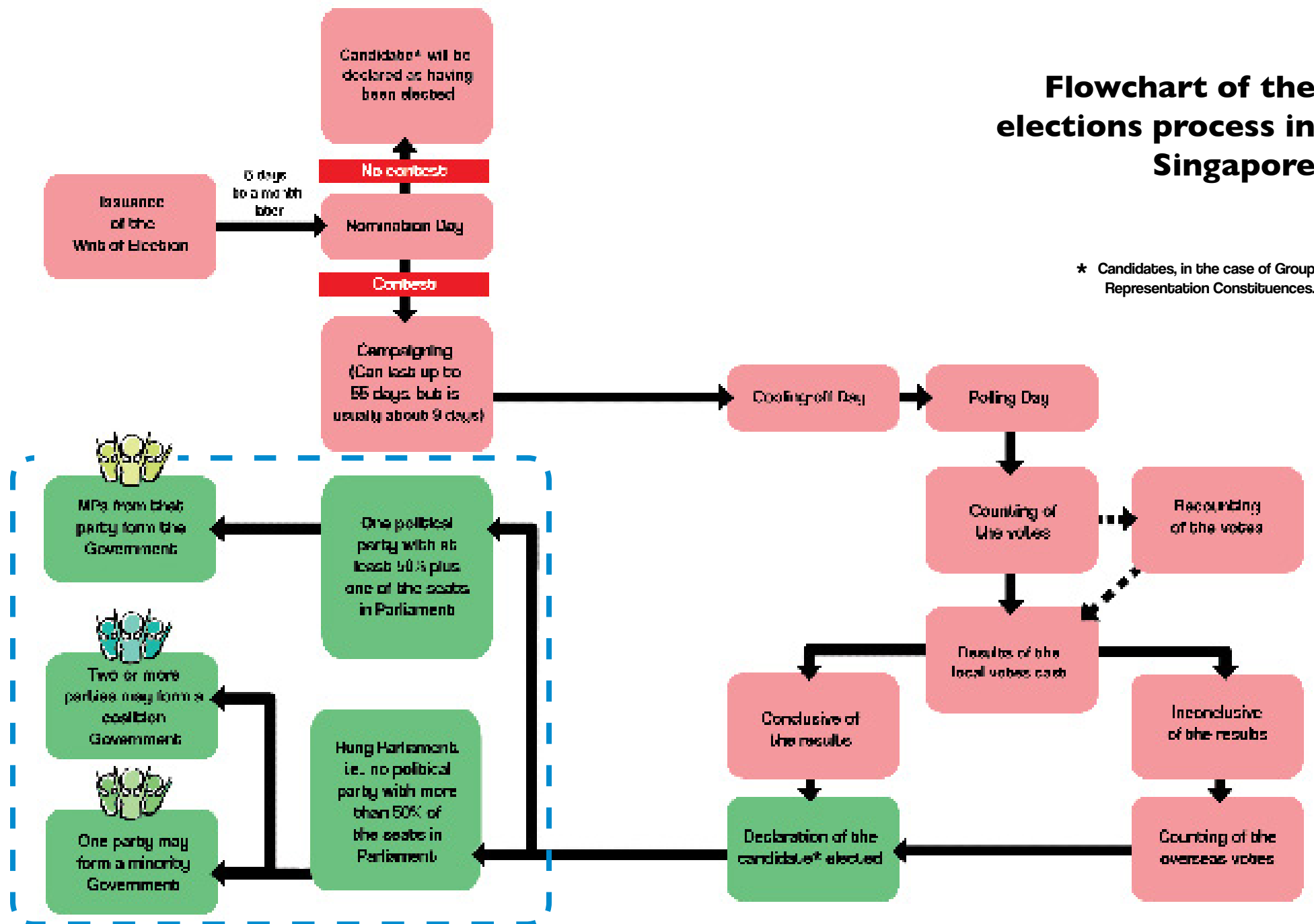
Presidential Council for Minority Rights

The Presidential Council for Minority Rights (PCMR) comprises members who are appointed by the President if the President, acting in his discretion, concurs with the advice of the Cabinet. The main function of the PCMR is to scrutinise the bills passed by Parliament to ensure that they do not discriminate against any racial or religious community. The PCMR does not scrutinise money bills, and bills which are certified by the Prime Minister to be urgent or to affect the defence and security of Singapore.

The Electoral Process in Singapore

There are 2 types of elections in Singapore: parliamentary and presidential elections. They both follow the same general procedure, as illustrated in the flowchart on the next page.

Flowchart of the elections process in Singapore



Only applicable to parliamentary general elections.

Issuance of the Writ of Election



The entire process begins with the issuance of a writ of election and notice of it being given in the *Government Gazette*. The writ of election is a formal written order directing the Returning Officer – the official in charge of conducting the election – to hold the election. For parliamentary elections, the writ of election is issued by the President acting on the advice of the Cabinet. For presidential elections, the writ of election is issued by the Prime Minister.

Once the writ is issued, the Returning Officer will announce details relating to Nomination Day, including the date, time and places for nomination, the documents that candidates must submit on Nomination Day, and the amount of money that must be lodged as an election deposit. Candidates in a parliamentary election lose their election deposits if they do not poll at least 12.5% of the votes in the electoral divisions (constituencies) they contest in. Presidential election candidates lose their deposits if they do not secure at least 12.5% of the overall votes.

Nomination Day

On Nomination Day, aspiring candidates must file their nomination papers and make the election deposit between 11.00 am and 12.00 noon. After this nomination period closes, half an hour is set aside for the candidates to scrutinise each other's application forms. If they have any objections, aspiring candidates must raise them in writing to the Returning Officer during this half hour.

At 12.30 pm, the Returning Officer will declare a contest if there are two or more eligible candidates in a presidential election, or in a particular electoral division in the case of a parliamentary election. If so, the voters in that division will have to vote. If there is no contest, the unopposed candidate will be elected by default. This is known as a walkover.



Campaigning

Campaigning begins immediately after a contest has been declared and the eligible candidates are announced.

The campaigning period can legally be up to 55 days long, but usually a much shorter period of about 9 days is designated. The traditional modes of campaigning include visits to homes and neighbourhoods, rallies at designated areas, and party political broadcasts on television.

Candidates now also rely extensively on the Internet in conducting their campaigns. This includes the use of websites, discussion forums, video- and photograph-sharing platforms, electronic media applications and social networking sites like Facebook.

Cooling-off Day

On Cooling-off Day, the day before Polling Day, no new advertising or campaigning is allowed. However, advertising material that was already published does not need to be taken down. Cooling-off Day was introduced in 2010, and first observed in the 2011 General Election. It is intended to provide voters with a day to get over the excitement and emotion of campaigning, and reflect in a rational manner on issues raised during the campaign and how they intend to vote.



Polling Day

Polling Day is the day when all voters cast their votes. Except for by-elections, Polling Day is by law a public holiday. No campaigning is allowed, though candidates may inspect the polling stations throughout the day. Polling usually takes place between 8.00 am and 8.00 pm, and the votes will then be counted thereafter.

Candidates or their counting agents may inspect the counting process. A candidate may also ask for a recount of votes where the difference between the number of votes given to the candidate with the most votes and the number cast for any other candidate is 2% or less of the total number of votes cast at the election (excluding rejected votes). The Returning Officer will declare that the local votes are conclusive of the results if, based on the margins, the winner will not change even after the overseas votes are taken into account.

Overseas voting

Singapore citizens abroad who have registered as overseas electors can cast their votes at the overseas polling stations allocated to them. Polling overseas may take place



before polling starts in Singapore, but has to close before polling in Singapore ends. After an overseas poll is closed, the ballot boxes are brought back to Singapore for counting. They must reach the Returning Officer no later than 10 days after Polling Day.

Parliamentary elections

Parliamentary elections must be conducted within 5 years of the first sitting of Parliament after the last general election. However, the Prime Minister may choose to call a general election before the maximum five-year period is up.

The number of elected MPs in each term of Parliament depends on the number of electoral divisions there are. This is not permanently fixed by any law. The Prime Minister usually appoints an Electoral Boundaries Review Committee (EBRC) just before a parliamentary election to make recommendations on the number and sizes of electoral divisions, and where the boundaries of these divisions should be. The EBRC examines factors such as population changes. It is then up to the Prime Minister to decide whether to accept the recommendations. The Prime Minister usually declares the electoral divisions for the next general election 1 or 2 months before the election actually takes place.

There are 2 types of electoral divisions: Single Member Constituencies (SMCs), and Group Representation Constituencies (GRCs).

SMCs



Each SMC returns one MP to Parliament. Before GRCs were introduced in 1988, all electoral divisions in Singapore were SMCs.

GRCs



A GRC can have between 3 and 6 MPs, and at least 1 member must belong to the Malay, Indian or another minority community in Singapore. GRCs are to ensure minority

representation in Parliament, and to reap economies of scale in estate management. The precise numbers of GRCs and MPs in each GRC, and whether the minority MP must be from the Malay community or the Indian or other minority community, are also not permanently fixed by law. This information is declared by the Prime Minister when he or she announces the SMCs and GRCs for the parliamentary election.

The candidates in a team contesting in a GRC must either all be from the same political party, or all be independent candidates standing as a group.

The 2015 general election marked the first time since Singapore's independence that all the seats in Parliament were contested. This is partly because newer political parties like the People's Power Party and Singaporeans First contested the election for the first time. The PAP's overall vote share increased by 9.7% from the 2011 General Election. Nonetheless, the Workers' Party managed to hold on to Aljunied GRC, which they had wrested from the PAP in 2011.

By-elections

If an elected MP's parliamentary seat is vacated, for example, because of death, resignation or expulsion from a political party, Article 49(1) of the Constitution states that the seat *shall be filled by election*. In a 2013 Court of Appeal decision, this phrase was interpreted to mean that the Prime Minister must call a by-election within a reasonable time. However, there is no specified time frame for doing so, and the Prime Minister is entitled to take into account all relevant circumstances in deciding when a by-election should take place. The Prime Minister may even decide not to hold a by-election if there is a general election due to occur soon.

On 7 May 2016, a by-election was held in Bukit Batok SMC after the MP for the constituency, David Ong, resigned from the PAP. In a straight fight between the PAP's Murali Pillai and the Singapore Democratic Party's Chee Soon Juan, Pillai emerged victorious with 62.1% of the valid votes cast.



Presidential elections

Unlike the length of Parliament's term which the Prime Minister has some discretion to decide, the length of the President's term is fixed by the Constitution. The President's term of office is therefore independent of Parliament's term.

Presidential elections are held every 6 years unless the office of the President becomes vacant before the term is complete, for example, if the President dies or resigns. In this case, a writ for a presidential election must be issued within 6 months of the date when the office of the President became vacant.

Another key difference between parliamentary and presidential elections is that aspiring candidates in a presidential election must first obtain a certificate of eligibility before they are even allowed to stand as candidates.

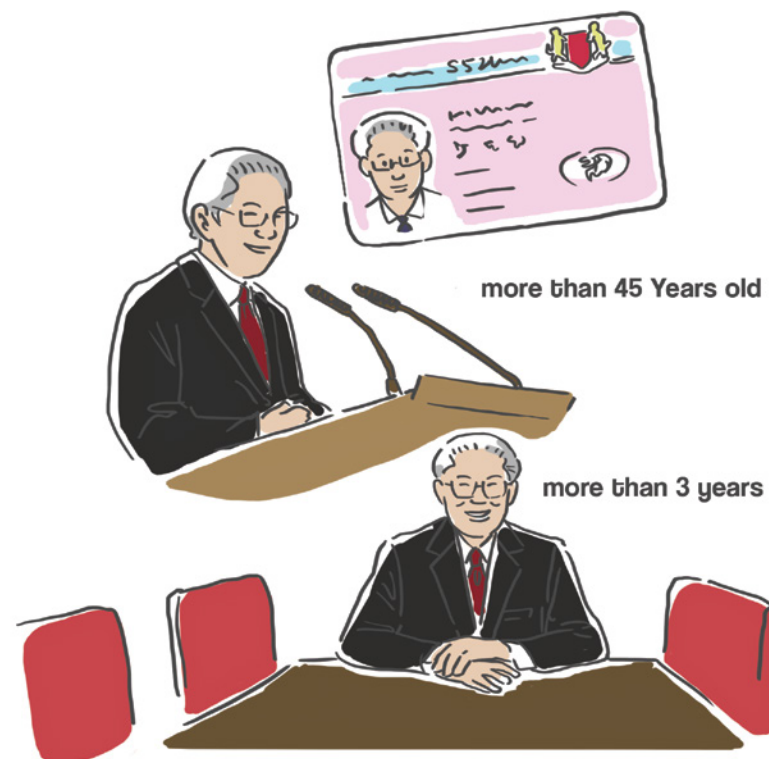
Before a presidential election, aspiring candidates must submit an application to the Presidential Elections Committee (PEC), which will determine if the requirements for a certificate of eligibility are met. Under the Constitution, the PEC comprises three members — the Chairman of the PSC, the Chairman of the Accounting and Corporate

Regulatory Authority, and a member of the PCMR.

The requirements for obtaining a certificate of eligibility include:

- being a citizen of Singapore;
- being at least 45 years old;
- being a person of integrity, good character and reputation;
- not being a member of any political party on Nomination Day; and
- Having held any of these positions for a period of at least three years:

- Minister, Chief Justice, Speaker of Parliament, Attorney-General, Chairman of the PSC, Auditor-General, Accountant-General or Permanent Secretary;
- Chairman or chief executive officer of the Central Provident Fund Board, Housing and Development Board, Jurong Town Corporation or Monetary Authority of Singapore;
- Chairman of the board of directors or chief executive officer of a company with a paid-up capital of at least \$100 million; or
- A comparable position of seniority and responsibility in any other organisation in the public or private sector.



In February 2016, Prime Minister Lee Hsien Loong appointed a 9-member Constitutional Commission, chaired by Chief Justice Sundaresh Menon, to examine key aspects of the Elected Presidency scheme: including the qualifying criteria for aspiring presidential candidates. In September 2016, the Constitutional Commission Report was made public. As at the time of printing, it is anticipated that the changes to the Elected Presidency will be introduced in the near future.

Voting and voting systems

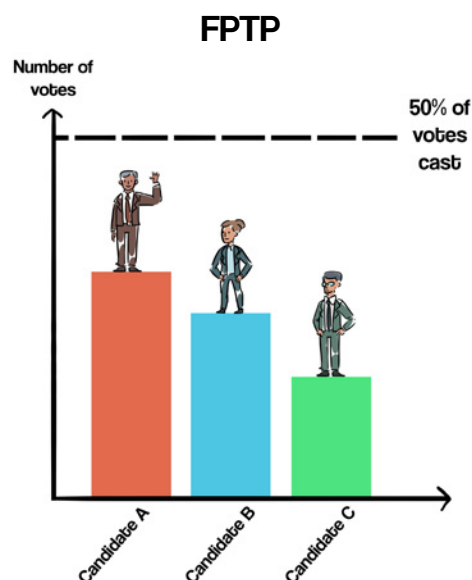
The Government has recognised that the right to vote is a constitutional right enjoyed by Singapore citizens. Voting is compulsory for all Singapore citizens aged 21 and above, and who are ordinarily resident in Singapore. All citizens who are eligible to vote are automatically placed on the electoral register. There is no need for them to register to vote. During an election, each eligible voter will receive a poll card by mail notifying him or her of the polling station to vote at.

It is trite that the voting system in place determines how voters' choices at an election lead to candidates eventually entering public office. Different voting systems often lead to significant differences in determining who gets elected.

First-past-the-post system

The voting system we have in Singapore for both parliamentary and presidential elections is the first-past-the-post (FPTP) system. This means that the candidate with the most number of votes will be the winner, regardless of the actual winning margin. A candidate can win an election by winning just one vote more than his or her opponents!

One effect of the FPTP system is that the eventual winner may not actually have the majority (i.e. more than 50%) of votes — he or she just needs to have more than the rest. This is likely to happen when there are more than 2 candidates taking part in the elections.

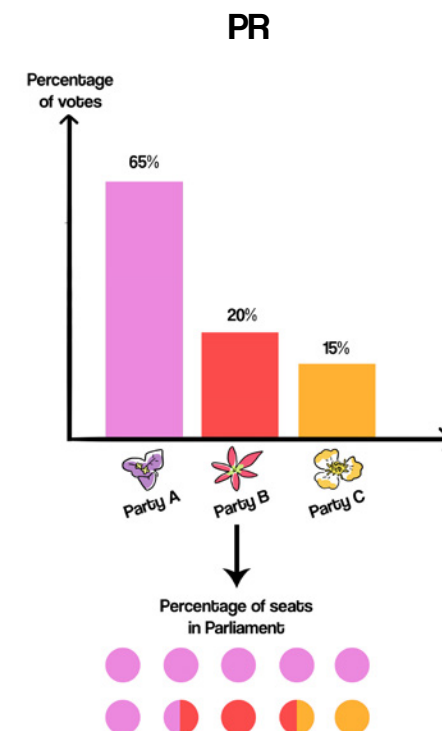


Proportional representation

Proportional representation (PR) is often used in the context of legislative elections, where there are many seats to fill and therefore many candidates to be elected. Generally speaking, in PR, seats in Parliament are allocated in pro-

portion to the overall percentage of votes each political party receives. For instance, if a party received 20% of the votes cast at a general election, then 20% of the parliamentary seats will be allocated to that party.

While there are several variants of the system, PR generally benefits smaller parties as they can be allocated seats without having to defeat a bigger party outright in any electoral division like in the FPTP system.

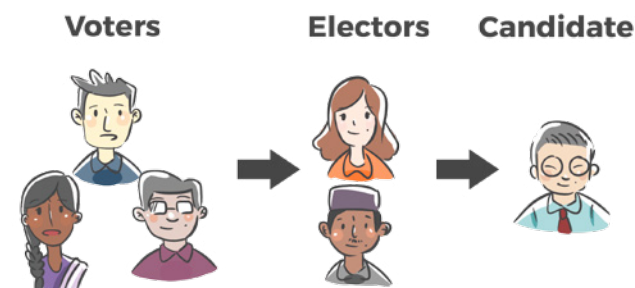


Electoral college system

In an electoral college system, voters do not directly vote for the candidate or candidates who will enter office. Instead, voters elect persons known as electors who will then make the choice on their behalf.

For example, in the United States, citizens do not vote directly for the President. Rather, they vote for an elector in their state, who will then vote for the President as part of the Electoral College. Electors are usually pledged to a particular candidate. While they may not be required by law to vote according to their pledge, electors in the US rarely vote otherwise.

Electoral College





The Judiciary

The Judiciary is a non-elected arm of government. Its role in exercising judicial power is to adjudicate disputes between people as well as to determine disputes between the government and the citizens of the country.

Under the separation of powers, an independent Judiciary ensures that the actions and decisions of the Executive and Legislature comply with the applicable laws. In the case of any abuse of power or arbitrary use of power, the government's actions can be quashed through the mechanism of judicial review. The law and order that the Judiciary helps to maintain is crucial for the proper functioning of a democracy.

How does the Judiciary check the Executive?

The Judiciary ensures that the Government including all officers of ministries, government departments and statutory boards act within the powers conferred to them by the law. They must also comply with rules of administrative law that have been laid down in court judgments over the years. For example, when making a decision, a public authority must not take into account irrelevant factors that have no bearing on the decision to be made. The public authority must also give people a reasonable opportunity to explain their situations. Any person who feels that a public authority has not complied with the law can apply to court for judicial review. If the court finds that an authority has indeed acted unlawfully, it can quash (cancel) the decision made or, in some cases, order the authority to act in a lawful way.

The Judiciary also plays a role in the impeachment process of the President. This process is only triggered if the Prime Minister, or not less than a quarter of elected MPs, take the view that the President needs to be removed from office. This can only be done for serious reasons such as mental or physical infirmity which makes the President permanently incapable of carrying out his functions, or some misconduct or corruption involving the abuse of the powers of his office. The Chief Justice appoints a tribunal consisting of at least 5 Supreme Court judges to assess whether the President should be removed. The tribunal then reports to the Speaker of Parliament. If the tribunal is of the view that the President should be removed from office, Parliament can do so if at least 3/4 of elected MPs vote in favour of taking such action.

How does the Judiciary check the Legislature?

The Judiciary ensures that the statutes passed by Parliament are consistent with the Constitution. As explained in Chapter 1, the Singapore legal system functions on the basis of constitutional supremacy. Everyone, including Parliament when enacting statutes, has to act consistently with the provisions of the Constitution. Any person who feels that he or she is adversely affected can apply to court for judicial review. If the court finds that the statute is indeed inconsistent with the Constitution, it can declare that the statute is void and has no effect.





The Judiciary's other primary function is to decide the outcome of disputes between persons.

System of courts in Singapore

Judicial power in Singapore is vested in the Supreme Court and the State Courts (formerly known as the Subordinate Courts).

State Courts

The State Courts of Singapore comprise the District Courts, the Magistrates' Courts, the Coroner's Courts and the Small Claims Tribunals.

The District Courts and Magistrates' Courts both hear criminal and civil cases, although Magistrates' Courts hear a more limited range of cases than the District Courts.



The Coroner's Courts hold inquiries to investigate deaths classified as unnatural. In contrast to regular court proceedings, Coroner's inquiries are intended to be inquisitorial in nature. Parties and witnesses present evidence to aid the court in reaching a finding on the cause of death, which may sometimes be due to a criminal act or be the result of someone's negligence.

The Small Claims Tribunals handle civil (non-criminal) disputes involving small sums of money. They are meant to provide an informal, easy and inexpensive way to solve disputes. Hence, lawyers are not permitted to represent parties in Small Claims Tribunals proceedings.

Supreme Court

The Supreme Court has 2 divisions: the lower division is called the High Court, and the upper division the Court of Appeal.

High Court

The High Court exercises original

and appellate jurisdiction in civil and criminal cases, which means that it hears first instance cases – cases that come before the Court for the first time – as well as cases on appeal from the State Courts.

The High Court can exercise original jurisdiction over all cases where: (i) the defendant is served with court papers in Singapore; (ii) the defendant is served with court papers outside Singapore but in accordance with the Singapore Rules of Court; or (iii) the defendant has submitted to the jurisdiction of the High Court.

However, in practice, the High Court generally hears civil cases where the claim amount exceeds

\$250,000. Civil cases that do not meet this criterion are usually heard in the State Courts.



The High Court is also empowered to try all offences committed in Singapore, or where a statute specifies that the offence is triable in Singapore even though it took place overseas. Nonetheless, in general the High Court only hears cases where the offences are punishable by death or with imprison-



ment terms exceeding 10 years; and where the law states that the offences must be heard in the High Court, such as rape.

Finally, applications for judicial review can only be brought before the High Court.

Court of Appeal

The Court of Appeal became the court of final appeal, and thus the highest court, in Singapore after the right of appeal to the Judicial Committee of the Privy Council in London was abolished in April 1994. The Court of Appeal hears appeals from the High Court and High Court (Family Division). The Chief Justice presides over the Court of Appeal. Cases before the Court of Appeal are usually heard by a panel of 3 Judges. However, certain appeals may be heard by 5 or any greater uneven number of Judges. A larger number of judges may hear a particular appeal if it raises issues of legal importance.

Family Justice Courts

The Family Justice Courts were established in 2014 through the Family Justice Act 2014 to consolidate and streamline the handling of all family-related matters. The Family Justice Courts comprise the Family Courts, the High Court

(Family Division) and the Youth Courts. The Family Courts is now the court of first instance for almost all family proceedings. Cases may be transferred to the High Court (Family Division) if they are complex or involve important questions of law.

These changes were introduced to ensure better case management and access to family justice. The judge-led approach places the welfare of children at the forefront, and the measures such as mandatory consultation and counselling to reduce the acrimony between parties in court.

The need for judicial independence

In order to perform its functions well, it is important for the Judiciary to be independent from Executive and Legislature. This is so that Judges can make their decisions impartially and in accordance with the law, without any improper influence. Such influence could come from any number of sources, including the Legislature, the Executive, the litigants or even non-governmental organisations.

In addition to being independent in fact, it is also important that Judges are seen to be independent and

impartial. *Justice should not only be done, but should manifestly be seen to be done.* This is so that public confidence and respect for the Judiciary and judicial authority, which is exercised through judicial decisions, will be upheld.

To ensure that the Judiciary remains independent, various measures are in place:

1. Contempt of court: the courts have the power to punish individuals for contempt. In the Administration of Justice (Protection) Act that was recently passed in Parliament, the law on contempt of court has been consolidated into a statute as opposed to being purely based on court ruling in the past. Offences of contempt include alleging with no proper basis that a judge is biased and interfering with court proceedings by pre-judging. The criminal offence of contempt of court helps to maintain public confidence in the Judiciary and the administration of justice in Singapore.



2. Security of tenure: Supreme Court judges are appointed until the age of 65, and a person

currently serving as a judge cannot be removed from office unless strict criteria such as mental or physical disability are met. This prevents a judge from being influenced to decide a case in a certain way for fear of being removed by members of the Executive or Legislature.



3. Remuneration: a Supreme Court judge's pay cannot be adjusted to his or her disadvantage after being appointed. Like the security of tenure, this is to prevent a Judge from being influenced to decide a case a certain way to avoid having his or her pay reduced.



4. Immunity from civil suits: both Supreme Court and State Courts judges are immune from being personally sued in respect of any act that they do in their capacity as judges. This immunity allows judges to decide cases without the fear of being



ued. Protection does not extend to acts done outside their capacity as judges.

5. Other measures: other legal measures to protect the Judiciary's independence include the prohibition against discussing the conduct of a Judge in Parliament in Parliament unless specific conditions are met.

Glossary

Administrative law	A set of legal rules laid down by the courts in judgments over the years which public authorities must comply with to ensure that their actions and decisions are lawful.
Appeal	If a person is not satisfied with a decision made by the court that heard his or her case at first instance (that is, for the first time), he or she can appeal the case to a higher court. In general, first-instance decisions of the State Courts can be appealed to the High Court, and first-instance decisions of the High Court can be appealed to the Court of Appeal.
Bill	A draft statute.
By-election	An election held in between general elections to fill a parliamentary seat that has become vacant.
Constitution	The Constitution of the Republic of Singapore (1999 Revised Edition), which is the supreme law of Singapore. Ordinary laws that are inconsistent with the Constitution are void.
Contempt of court	Behaviour that disobeys or defies the authority and dignity of the court.
Court of Appeal	The upper division of the Supreme Court. It is the highest court in Singapore and its court of final appeal.
CPA	The Council of Presidential Advisers, which advises the President on the exercise of his discretionary powers.
EBRC	The Electoral Boundaries Review Committee, which is appointed by the Prime Minister to make recommendations on the number and sizes of electoral divisions, and their boundaries.
FPTP	The first-past-the-post system of voting where the candidate with the most number of votes is elected into public office.
Government Gazette	An official journal issued regularly in which laws, legal notices and the other government matters are published.
GRC	Group Representation Constituency, an electoral division in which a group of candidates is voted into Parliament as a team.
High Court	The lower division of the Supreme Court, which hears cases that come before the court for the first time, as well as appeals from the State Courts.
Judicial review	A person who feels that action taken by a public authority is unlawful, or that a statute passed by Parliament is unconstitutional, can apply to the High Court for judicial review.

MP	Member of Parliament.
NCMP	Non-constituency Member of Parliament, an opposition candidate who contested in a general election and lost, but is declared elected to Parliament by virtue of being one of the “best losers” among the opposition candidates at the election.
NMP	Nominated Member of Parliament, a person who is not elected but appointed to Parliament by the President on the recommendation of a Special Select Committee of Parliament.
PCMR	Presidential Council for Minority Rights, a body that assesses whether bills passed by Parliament discriminate against people on the basis of race or religion.
PEC	The Presidential Elections Committee, a body which determines whether people are sufficiently qualified to take part in a presidential election.
Poll card	A card sent by mail to an eligible voter notifying him or her of the polling station to vote at.
PR	The proportional representation system of voting where parties are allocated seats in proportion to the overall number of votes received.
PSC	Public Service Commission.
Returning Officer	The person overseeing the election process, from issuing the notice of election to declaring the results.
SMC	Single Member Constituency, an electoral division in which a single candidate is elected into Parliament.
State Courts	The lower courts in Singapore, which deal with, amongst others, civil claims of less than \$250,000 and criminal offences with maximum imprisonment terms of 10 years or less.
Supreme Court	The upper court in Singapore, which is made up of the High Court and Court of Appeal. It deals with more serious cases.
Writ	A formal written order.

A Guide to the Singapore Constitution presents the Singapore Constitution— the supreme law of the land— and its underlying concepts such as the separation of powers and constitutional supremacy in a simple and easy-to-understand manner.

Designed for readers of all ages and from all walks of life, this primer began as an idea by 2 undergraduates from the Singapore Management University (SMU) in 2012 to make the Singapore Constitution more accessible. The first edition entitled *The Singapore Constitution: A Brief Introduction* was published in 2013.

